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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,914	09/18/2000	Adelmo Monsalve-Gonzalez	5346	4221

7590 02/12/2003

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	17

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/663,914	Gonzalez et al
Examiner	**Art Unit**
Lien Tran	1761

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) X Responsive to communication(s) filed on *Jan. 17, 2003*

2a) This action is **FINAL**. 2b) X This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) X Claim(s) *21-25, 27, 31-58, and 60-63* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) X Claim(s) *21-25, 27, 31-58, and 60-63* is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and or 121.

Attachment(s)

1	Notice of References Cited (PTO-892)	4	Interview Summary (PTO-413) Paper No.s.
2	Notice of Draftsperson's Patent Drawing Review (PTO-948)	5	Notice of Informal Patent Application (PTO-152)
3	Information Disclosure Statement.s). (PTO-1449) Paper No.s)	6	Other.

1. Claims 21-25, 27, 31-57 and 63 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant amended the claims to add the limitation " treating bran derived from a cereal grain with an excess amount of a hydrogen peroxide solution". This limitation does not have support in the original disclosure. The specification does not recite anything about " an excess amount of a hydrogen peroxide solution. Applicant points to page 11 lines 26-28 for support; however, page 11 does not disclose anything about an excess amount. Lines 26-27 of page 11 discloses " The peroxide can be sprayed onto the bran or the bran can be soaked in a heated bath of peroxide"; these lines do not state anything about an excess amount. New claim 63 is not supported by the original disclosure.

2. Claims 21-25, 27 and 31-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all relevant claims, the phrase " an excess amount of a hydrogen peroxide solution" is indefinite because it is not known what will constitute "an excess amount". The specification does not have any guideline or disclosure on what will be considered as " an excess amount". The scope of the claims can not be determined.

3. Claims 38 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Devic (5480788).

Devic discloses a bleached bran product. The product is obtained by treating bran from cereal with alkaline aqueous hydrogen peroxide solution having a pH greater than or equivalent to 8.5. A sequestering agents for metal ion can also be added; such agents include sodium silicate, soluble magnesium salts, citric acid, sodium tripolyphosphate and pyrophosphoric acids. The hydrogen peroxide is typically used in the form of an aqueous solution of 30-70% strength. The amount of hydrogen peroxide used advantageously varies from 1-20% by weigh relative to the dry weight of the material, depending on the desired degree of whiteness and depending on the nature of the fibrous material. The bleached product is treated with catalase to decompose peroxide (See col. 2-5 and the examples).

Devic discloses the a bleached bran product that is obtained by treatment with alkaline aqueous hydrogen peroxide solution and also in the presence of a chelating agent. Thus, it is inherent the product has the same property as claimed. With regard to the new limitation " an excess amount of hydrogen peroxide solution", it is not known what will constitute " an excess amount" and the specification does not define " an excess amount". Applicant points to page 11 lines 26-28 for support of the limitation " an excess amount"; page 11 does not give any amount or defines excess amount. It only states that " the peroxide can be sprayed onto the bran or the bran can be soaked in a heated bath of peroxide". If by excess amount, applicant means the bran is soaked into the peroxide solution; then, Devic discloses such limitation because the reference

teaches " soaking the plant material with an alkaline aqueous hydrogen peroxide solution". Furthermore, treating the bran with an excess amount of hydrogen peroxide solution is a difference in processing step and such difference does not determine the patentability of the product.

4. Claims 21-25,27,31-58 and 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devic in view of Ramaswamy (5023103).

The teaching of Devic is described above. Devic does not disclose the L value, the properties, adding the bran to the type of foods claimed, the particle size and the use of ozone in combination with hydrogen peroxide.

Ramaswamy teaches ozone is a known bleaching agent. (See col. 5 lines 25-30)

With respect to the new limitation of " an excess amount of a hydrogen peroxide solution", the limitation does not define over the prior art for the same reason set forth above. It would have been obvious to one skilled in the art to vary the treatment to obtain a bleached product having varying degree of whiteness. Devic teaches the amount of hydrogen peroxide used can vary from 1-20% depending on the desired degree of whiteness. One can vary the degree of whiteness depending on the intended used of the product. For example, if the bleached bran is added to flour, it would be desirable to have a high degree of whiteness to match the color of the flour. However, if the bleached bran product is added to dough containing whole wheat flour, or dark color component such as brown sugar, then the whiteness of the product is not that critical. It would also have been obvious to add the bleached bran product to any foods when it

is desirable to increase the fiber content of the products; this would have been an obvious matter of choice. Since the Devic bleached bran product is obtained by treating with alkaline aqueous hydrogen peroxide solution, it obviously will have properties such as water absorption value, reduce native flavor components and increase antioxidant activity as claimed. As to the use of ozone in combination with hydrogen peroxide, it would have been within the skill of one the art to determine through routine experimentation which bleaching agent or if a combination of bleaching agent gives the best result and to use them accordingly. Optimization is within the skill of one in the art. If it is determined that a combination of bleaching agents gives the best result, then it would have been obvious to use a combination of agents . Ramaswamy discloses both hydrogen peroxide and ozone are known bleaching agents. In absence of showing of unexpected result or criticality, it would have been obvious to use any other known chelating agents; all the agents claimed are well known. As to the difference is the processing parameters claimed in claims 43,45,46,55,57, 61, 62, the claims are directed to a product. Determination of patentability in " product-by-process claims" is based on the product itself. Such product is unpatentable if it is same as or obvious from product of prior art (see In re Thorpe 227 USPQ 964).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

February 8, 2003